



Forest Heights Police Department Policy and Procedures Manual

Subject:	Administrative Hearings			
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A. Purpose

To provide policy and procedures governing the conduct of administrative hearings and suspension boards pursuant to the Law Enforcement Officers Bill of Rights (LEOBR) and Forest Heights Police Department (FHPD) directives.

B. Policy

It is the policy of FHPD to provide fair and thorough hearings for those employees who are non-probationary law enforcement officers, and other than the FHPD Chief, who are accused of misconduct in order to maintain an atmosphere of integrity, discipline, fairness, and professionalism.

C. Definitions

1. Administrative Leave means leave with pay (i.e., non-punitive) as opposed to an action resulting in an employee being suspended (i.e., which is a punitive action and is with or without pay). Placing an employee on administrative leave is not disciplinary and does not trigger LEOBR procedures; however, some events require this action. While on administrative leave with pay, a sworn officer continues to retain his powers of arrest.
2. Emergency Suspension means an action by the FHPD Chief or his designee to temporarily relieve an officer of his powers of arrest and use of police equipment while an investigation ensues regarding alleged or possible misconduct. The Chief may impose emergency suspensions with pay if it appears that the action is in the best interest of the public and the law enforcement agency. If the law enforcement officer is suspended with pay, the Chief may also suspend the police powers of the law enforcement officer and further reassign the law enforcement to restricted duties pending court disposition of a criminal charge or a final determination by an administrative hearing board regarding violation of a police directive or order.

D. Administrative Hearing Boards

1. Right to a Hearing Board

- a. According to the LEOBR statute, "[i]f the investigation or interrogation of a law enforcement officer results in the recommendation of demotion, dismissal, transfer, loss of pay, reassignment, or similar action that is considered punitive the law enforcement officer is entitled to a hearing on the issues (e.g., charges) by a hearing board before the law enforcement agency takes that action."
- b. "The law enforcement agency shall give notice to the law enforcement officer of the right to a hearing by a hearing board under this section of state law."
- c. The notice required under this subsection shall state the time and place of the hearing and the issues (i.e., charges) involved.
- d. An official record, including testimony and exhibits, shall be kept of the hearing. (Md. Code, Public Safety Article, Title 3, §3-107).
- e. If practical, the record will be kept by audio recording or minutes of the proceedings.

2. Waiver of a Hearing

- a. When an officer chooses to waive the hearing, such waiver will be documented and forwarded to the FHPD Chief prior to the hearing date.

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- b. In consideration of the potential inconvenience to witnesses, it is required that this waiver be made in time to allow proper notification.
- c. A waiver will result in a predetermined punitive action being administered.

3. Limitations on Administrative Charges

Except for cases of criminal conduct or excessive force, the FHPD must file charges within one year after the act that gave rise to the charges comes to the attention of the chain of command.

4. Exhaustion of Administrative Remedies and Judicial Show Cause Orders

- a. Before a law enforcement officer may seek judicial review of an agency decision in the courts, he must first exhaust any procedural rights afforded to him before the Department in accordance with the LEOBR.
- b. A law enforcement officer aggrieved by a suspension or a subsequent suspension hearing is required by the Maryland courts to await a final decision by a hearing board on the merits of the case prior to seeking judicial review.
- c. A law enforcement officer who alleges that he is about to be denied a right under LEOBR, however, may file a show cause order in the Circuit Court of Prince George's County pursuant to LEOBR (§3-105) thereby directing the FHPD to show the court why the right should not be granted prior to the beginning of hearing by the hearing board.

5. General Duties and Responsibilities of the Administrative Hearing Board

- a. The Administrative Hearing Board (the "Board"), convened by direction of the Chief of Police, conducts administrative hearings to hear the charges against Department personnel and brings forth to the Chief of Police the findings of fact and conclusions concerning the charges and, in sustained cases, recommends a course of action.
- b. It is the duty of the Board to judge the validity of charges made against officers.
- c. The decision will be made upon the information contained in investigative reports, statements, documents, testimony of witnesses, and other appropriate evidence introduced during the hearing.
- d. The recommendation of the Board is based on a simple majority vote.
- e. A hearing by the Board is an administrative proceeding in which neither life nor liberty is placed in jeopardy.
- f. The rules of evidence applicable in a criminal trial need not be strictly adhered to; hearsay and other evidence may be introduced for probative value.
- g. A hearing by the board is a quasi-judicial or administrative proceeding; as such it should be conducted in adherence to appropriate guidelines to ensure fairness and closed to the public in accordance with State law.
- h. The proceeding will be conducted with a certain amount of informality; however, a set agenda and definite rules of procedure will be established and explained to the parties at the opening of the hearing by the chair.

E. Types of Hearing Boards

1. Full Hearing Board

- a. The LEOBR historically has provided for an officer's right to a hearing on sustained charges and also provided a process by which the Chief of Police shall select hearing board chairpersons and members.
- b. The Chief of Police is empowered to select all board members, unless an alternative method has been established by a collective bargaining agreement.
- c. The only other specification in the LEOBR hearing is that one of the board members be of the same rank as the accused, if applicable.

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- d. Police officers who are represented by recognized bargaining units may be entitled to additional rights and privileges during the hearing board process.
- e. Officers should consult any existing collective bargaining agreement or other related agreements for details, and seek the advice of their union representative, if applicable, and their attorney, if desired.
- f. The purpose of the full Board is to provide a final decision or recommendation on the 'merits of the charges before the agency takes action to demote, dismiss, transfer, remove pay, reassign, or take a similar action.

2. Suspension Board

- a. According to LEOBR, (Md. Code, Public Safety Article, Title 3, §3-112) "the Chief may impose emergency suspension with pay if it appears that the action is in the best interest of the public and the law enforcement agency. A law enforcement officer who is suspended under this subsection is entitled to a prompt hearing."
- b. If the Chief or his designee imposes suspension, he/she shall notify the employee promptly in writing of that decision and inform the employee that he is entitled to a prompt hearing.
- c. If the employee requests a hearing, the Chief will ensure that a hearing is scheduled as soon as possible and that the employee is notified in writing of the date and time of the hearing.
- d. Promptly after an emergency suspension is imposed, a suspension hearing (e.g., a preliminary hearing) will be provided in order to determine whether the basis for suspension is reasonable under the circumstances and should be continued until a final determination is made by either the court regarding a criminal charge or the hearing board regarding the merits of a departmental directive violation or infraction.

3. Summary Punishment

- a. The Chief of Police may appoint a one-member (or up to three-member) hearing board for an officer who disputes the facts constituting a violation and who has been offered summary punishment for a minor violation pursuant to § 3-111 of LEOBR (If a one-member board is appointed, the member need not be of the same rank as the accused officer.)
- b. If the facts are not in dispute, however, the officer may waive the hearing and elect to receive summary punishment immediately without a hearing.
- c. The function and responsibilities of the one-member hearing board are the same as the three-member board, and its hearings will be conducted in accordance with applicable procedures under the Law Enforcement Officer's Bill of Rights and current labor contracts, if any.
- d. The one-member board may not impose summary punishment in excess of statutory limits, which currently are a suspension without pay not to exceed three days or a fine of \$150.00.

F. Chairman of the Administrative Hearing Board – Duties and Authority

- 1. The Administrative Hearing Board Chairman shall be a commissioned or noncommissioned officer appointed by the Chief of Police from within the Department or from another agency.
- 2. The Chairman will contact the other board members prior to the hearing, inform them of the name of the accused officer and the charge(s), and ensure they are familiar with their responsibilities as hearing board members.
- 3. The Chairman will explicitly instruct the board members that all information obtained through their assignment as a board member be held strictly confidential.
- 4. The Chairman will issue witness summonses (i.e., subpoenas) upon request by either party (i.e., the respondent officer or the Department) to the hearing.
- 5. The Chairman or Chief shall preside over the Board proceedings, administer oaths and decide any questions of procedure, or acceptability and relevancy of evidence subject to being overruled by a vote of the full Board.

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6. The Chairman will rule on objections that are raised and all other related matters, subject to being overruled by a vote of the full Board.
7. The Chairman will inquire into any discrepancies arising from any testimony, evidence or other facts presented at the hearing.
8. If an issue is identified at the hearing that is unrelated to the issue(s) in question, and in the opinion of the Board the new issue warrants formal attention, the Board should so recommend in the memorandum they forward to the Chief. They will not further consider such an issue in the deliberations at hand, but if the Chief concurs with such recommendation, he may direct an investigation into the newly developed issue.
9. The Administrative Hearing Board Chairman will be responsible for apprising the Chief and the affected employee of the Board's findings, recommendations, and actual vote in writing.
10. After deliberation by the Board on the issue(s) in question, the Chairman shall reach a consensus of the Board members as to the appropriate findings of fact for each issue. Included within such findings of fact will be a concise statement applicable to each issue.
11. The discussion of each issue will include references to any testimony or evidence that were relied on for the decision.
12. In the event a Board member dissents from any portion of the findings of fact or the recommendations for action, the Chairman will note the fact in the report to the Chief. The dissenting member may also submit the rationale for such dissent, and the member's opinion, if tendered, will be included in the report to the Chief.
13. In setting forth the duties of the Chairman, it is to be understood that it is not feasible to enumerate all the decisions, rulings, and findings that he may be called upon to make.
14. The Chairman will make the necessary rulings according to his knowledge and objectives, keeping in mind the relevancy of the issue at hand.
15. In the event that an objection or constitutional challenge to the introduction of certain evidence is made and the Chairman decides to allow admission of evidence, the Chairman should note the objection or challenge in the record and proceed with the testimony.
16. The Chairman should carefully review §§ 3-107 and 3-108 of LEOBR (Title 3 of the Public Safety Art. of the Md. Ann. Code) for further details regarding his specific duties and those of the Board.

G. Conduct of Administrative Hearing Board Proceedings

1. Order of Hearing Business, Roles, Considerations, and Presentation of Evidence

- a. Police Department Presentation
 - (1) Presentation of Department's case
 - (2) Cross-examination by defense
 - (3) Examination by board
 - (4) The Department may be represented by legal counsel.
- b. Defense Presentation
 - (1) Presentation of defense
 - (2) Cross-examination by Department
 - (3) Examination by board
 - (4) The Defendant may be represented by legal counsel.
- c. Conclusion
 - (1) Summation by Department
 - (2) Summation by defense
 - (3) Final rebuttal by Department
- d. Role of the Administrative Hearing Board

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- (1) Examination of all witnesses who testify at the hearing.
- (2) Examination of all evidence presented at the hearing.
- (3) Examination of all officers who testify at the hearing.
- (4) Deliberation leading to findings of fact and recommendation(s) by the board will be done in closed session apart from the parties.
- (5) The Board may be represented by legal counsel.

e. Degree of Proof

- (1) Unlike criminal trials where "beyond a reasonable doubt" is the degree of proof necessary to establish a finding of guilt, the degree of proof necessary for a hearing board to make a finding of guilt is the "preponderance of the evidence."
- (2) Preponderance of evidence denotes evidence which is of greater weight or more convincing than that which is offered in opposition to it; that is, evidence which as a whole shows that fact or causation sought to be proved is more probable than not. The trier of facts has to determine on which side of an issue the majority or "preponderance" of credible evidence falls.

f. Refusal to Testify

Should an officer disobey a direct order to testify specifically, directly, and narrowly to the facts, he may be subjected to disciplinary action for failing to obey a lawful and proper order.

2. Hearing Board Results and Subsequent Action

- a. According to LEOBR, "[a] decision, order, or action taken as a result of a hearing under §3-107 of this subtitle shall be in writing and shall be accompanied by findings of fact. The findings of fact shall consist of a concise statement on each issue in the case. A finding of not guilty terminates the actions." Per Md. Code, Public Safety Article, Title 3, §3-108(a). Findings should be made as a matter of principle. This is important for several reasons: the case may be subject to further review and a more intelligent review is thus made possible; findings apprise the parties of the basis for the decision, and finally, a statement of findings demonstrates that matters were carefully considered. The members of the board, during their deliberations, should consider the evidence related to each issue (i.e., charge) and come to a conclusion as to their validity.
- b. Per Md. Code, Public Safety Article, Title 3, §3-108 (a) - If the hearing board makes a finding of guilt, the hearing board shall:
 - (1) reconvene the hearing (i.e., hold a post-merits/recommended punishment hearing);
 - (2) receive evidence; and
 - (3) consider the law enforcement officer's past job performance and other relevant information as factors before making recommendations to the Chief.
- c. Per Md. Code, Public Safety Article, Title 3, §3-108 (a) - A copy of the decision or order, finding of facts, conclusions, and written recommendations for action, shall be delivered or mailed promptly to:
 - (1) the law enforcement officer or the law enforcement officer's counsel or representative of record; and
 - (2) the Chief.
- d. Per Md. Code, Public Safety Article, Title 3, §3-108 (b) - After a disciplinary hearing and a finding of guilt, the hearing board may recommend the penalty it considers appropriate under the circumstances, including demotion, dismissal, transfer, loss of pay, reassignment, or other similar action that is considered punitive. The recommendation of a penalty shall be in writing.
- e. Per Md. Code, Public Safety Article, Title 3, §3-108(d) - Within 30 days after receipt of the

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recommendations of the hearing board, the Chief shall:

- (1) review the findings, conclusions and recommendations of the hearing board; and
 - (2) issue a final order. The final order and decision of the Chief is binding and then may be appealed in accordance with Section 3-109 of this subtitle. The recommendation of a penalty by the bearing board is not binding on the Chief unless he was an eyewitness to the investigated incident. The Chief shall consider the law enforcement officer's past job performance as a factor before imposing a penalty.
- f. Per Md. Code, Public Safety Article, Title 3, Section 3-108(d0 - The Chief may increase the recommended penalty of the hearing board only if the Chief personally:
- (1) reviews the entire record of the proceedings of the hearing board;
 - (2) meets with the law enforcement officer to be heard on the record;
 - (3) discloses and provides in writing to the law enforcement officer, at least 10 days before the meeting, any oral or written communication not included in the record of the bearing board on which the decision to consider increasing the penalty is wholly or partly based; and
 - (4) states on the record the substantial evidence relied on to support the increase of the recommended penalty.
- g. Per Md. Code Public Safety Article, Title 3, §3-109 (a) - An appeal from a decision made under §3-108 of this subtitle shall be taken to the circuit court for the county in accordance with Maryland Rule 7-202." Md.
- h. Per Md. Code, Public Safety Article, Title 3, §3-109 (b) - A party aggrieved by decision of a court under this subtitle may appeal to the Court of Special Appeals.

H. Suspension Hearing Board

1. Purpose

The purpose of the suspension hearing is to determine whether the suspension of an officer by the Chief of Police or his designee is reasonable under the circumstances. The procedures for the suspension hearing will follow that of the Administrative Bearing Board with the following exceptions:

- a. The Suspension Hearing Board does not bring forth to the Chief findings of fact, but merely examines the evidence to the point of determining the reasonableness of the suspension.
- b. Since the Suspension Hearing Board does not determine guilt or innocence, the "preponderance of the evidence" rule applies only to that amount of evidence necessary to determine the reasonableness of the suspension.
- c. The Suspension Bearing Board does not recommend punishment, but merely recommends action or the reasonableness thereof on the issue of suspension or continued suspension until the full evidentiary hearing.

2. Recommendations

The Suspension Hearing Board may make any of the following recommendations:

- a. that the officer be placed on administrative leave with pay;
- b. that the officer be suspended without pay if charged with a felony;
- c. that the officer be returned to full duty; or
- d. that the officer be assigned to administrative/restricted duty.

3. Post-Hearing Procedures

The recommendations of the Board will be put in writing and promptly forwarded to the Chief of Police and the employee. Upon receipt of the Board's recommendation, the Chief shall review the recommendation and promptly notify the officer in writing of his/her status.

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I. Summary Punishment Hearing Board

The procedures of the Summary Punishment Board will follow those of the Administrative Hearing Board with the following exceptions:

1. The Summary Punishment Board does not bring forth to the Chief any findings of fact, but merely examines the evidence to the point of determining the suitable degree of summary punishment to be imposed.
2. Since the Summary Punishment Board does not determine guilt or innocence, the "preponderance of the evidence" rule applies only to that amount of evidence necessary to determine the degree of summary punishment to be imposed.
3. The Summary Punishment Board consists of one member selected by the Chief; there is no provision or requirement that the board member be of equal rank as the appellant officer.

J. Firearms Control

Unless, expressly permitted by the Chief of Police, all personnel are prohibited from wearing or carrying a firearm or other weapon while being interviewed as part of the internal investigation process or while attending a hearing board.

K. Reference

The Maryland Chiefs of Police Association, Inc. publishes "Guidelines and Procedures for Hearings Conducted Pursuant to the Maryland Law Enforcement Officers' Bill of Rights," (9th ed., 1997)